

Judges and Magistrates Group

Annual Determination

Report and determination under section
13 of the Statutory and Other Offices
Remuneration Act 1975

21 July 2022

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Section 1

Background

Legislative Framework

1. Section 13 of the *Statutory and Other Offices Remuneration Act 1975* (SOOR Act) requires the Statutory and Other Offices Remuneration Tribunal (“the Tribunal”) to make an annual determination of the remuneration to be paid to office holders on and from 1 July in that year. Section 10A defines ‘remuneration’ as salary or allowances paid in money.
2. The Judges and Magistrates Group comprises those public offices listed in the schedules of the SOOR Act (except for the Court and Related Officers Group and the Public Office Holders Group), which have been grouped together by the Tribunal for remuneration purposes. The remuneration for these office holders is determined as a fixed salary amount. Employer on-costs, such as the Superannuation Guarantee Contribution (SGC), are additional to the salary amount determined.

Government Wages Policy

3. The Tribunal is required, when making determinations under Part 3 of the SOOR Act, to give effect to any policy concerning the remuneration of office holders as declared by the regulations. Section 6AB of the SOOR Act applies to the Tribunal’s determinations in respect of office holders in the Judges and Magistrates Group, the Court and Related Officers Group and the Public Office Holders Group. Government policy concerning the remuneration of office holders to which Part 3 of the SOOR Act applies is declared in the *Statutory and Other Offices Remuneration (Judicial and Other Office Holders) Regulation 2013* (the SOOR Regulation).
4. On 6 June 2022, the NSW Government announced a new public sector wages policy.¹ The two year policy offered non-executive employees a 3 per cent remuneration increase in 2022-23 and 2023-24, with a possible further 0.5 per cent on offer for employees that make a substantial contribution to productivity enhancing reforms. The Government also announced its position to limit executive remuneration increases to 2 per cent in the 2022-23 financial year.

¹ NSW Government. (2022). *NSW Government lifts wages and recognises health workers*. <https://www.nsw.gov.au/media-releases/budget-2022-public-sector-wages#:~:text=The%20new%20two%2Dyear%20policy,substantial%20contribution%20to%20productivity%20enhancing>

5. The *Industrial Relations (Public Sector Conditions of Employment) Regulation 2014* was amended to reflect this policy but the SOOR Regulation was not amended. Therefore, in accordance with the clause 6 of the SOOR Regulation, any increase the Tribunal may determine in excess of 2.5 per cent, be it a general increase available to all office holders, or an increase provided to an individual office holder or group of office holders based on changes in work value, could be awarded if officer-related cost savings for the office holder (or group of office holders) have been achieved to fully offset the increased officer-related costs resulting from increased payment.
6. The Tribunal observes there have been few examples of officer-related cost savings being successfully identified. The Tribunal notes it remains open to receiving submissions that demonstrate the genuine achievement of officer-related cost savings.
7. Since the introduction of the SOOR Regulation in 2013 office holders in the Judges and Magistrates Group have received general annual increases capped at 2.5 per cent, apart from 2020 when there was a temporary wage pause pursuant to Clause 5A of the SOOR Regulation commencing 29 May 2020 and ending 12 months after that date.

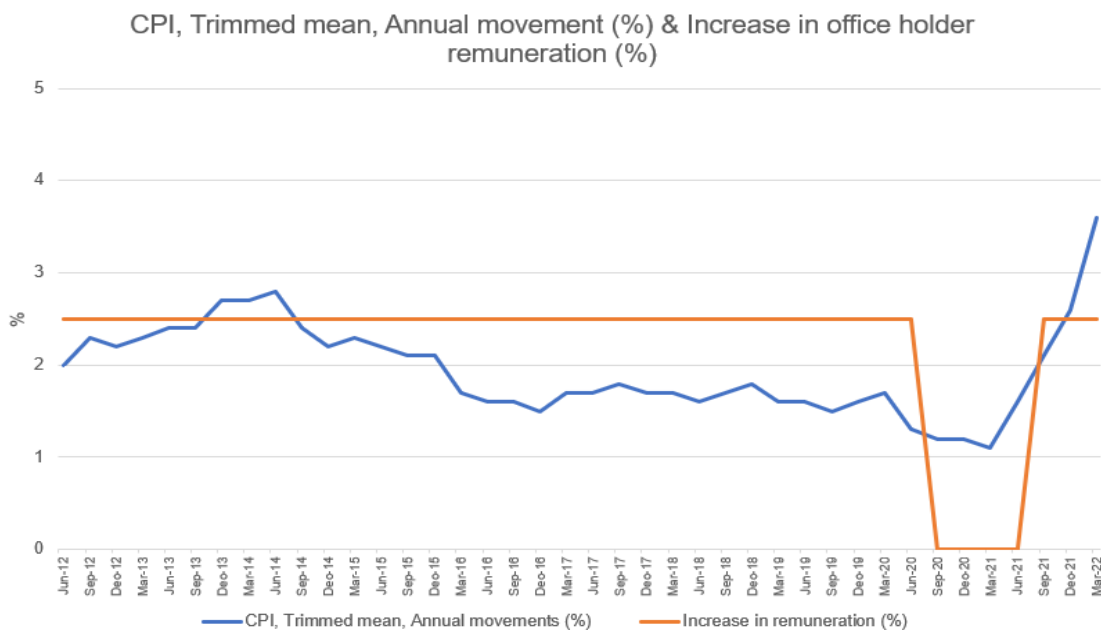
Economic Analysis

8. As outlined in its 2022-23 Budget papers,² the Government expects the economy to grow at an above-trend pace on average across the forecast horizon to 2025-26, supported by strong near-term momentum in the labour market and the resilient state of aggregate balance sheets.
9. A combination of global supply chain shocks and the impacts of COVID-19 have driven increases in inflation across most of the developed world. Underlying inflation, which excludes items that have particularly large price changes during a given period, point to broader inflationary pressures in the economy.
10. Annual headline inflation in Sydney was 4.4 per cent through the year to the March quarter 2022. This was lower than the national headline figure of 5.1 per cent. National underlying inflation rose by 3.5 per cent in the March 2022 quarter, which is above the RBA's target band of 2-3 per cent

² NSW Government. (2022). *NSW Budget 2022-23, No.01 Budget Statement Budget Paper*. https://www.budget.nsw.gov.au/sites/default/files/2022-06/2022-23_03_Budget-Paper-No-1-Budget-Statement.pdf

11. The Government expects inflation to peak at a lower rate than has been observed in various other countries. Growth in headline and underlying inflation is expected to peak in late 2022 before easing back to the top of the RBA's 2-3 per cent inflation target by end of 2023. This reflects an anticipated gradual easing of inflationary pressures as global supply chain issues are resolved and the effects of monetary policy normalisation from the RBA, and other global central banks, flow through to the economy.

12. The Tribunal acknowledges the short-term impacts of higher than expected inflation. The Tribunal observes however that from June 2012 to June 2020, underlying inflation has for the most part³ grown at a lower pace than increases in remuneration for the Judges and Magistrates Group.⁴



³ In 2014 the Tribunal awarded the equivalent of a 2.5 per cent annual increase in remuneration to office holders. For salaried office holders, this was adjusted to 1.88 per cent, inclusive of the increase in the SG that occurred that year. The lower rate was due to the determination coming into effect 1 July 2014, rather than 1 October as had applied in earlier determinations.

⁴ Australian Bureau of Statistics. (2022). *CPI, Trimmed mean and Weighted median, Annual movement (%)*. <https://www.abs.gov.au/statistics/economy/price-indexes-and-inflation/consumer-price-index-australia/latest-release>

2021 Determination

13. After considering submissions received and provisions of section 6AB of the SOOR Act the Tribunal found those office holders the subject of that determination should receive the maximum permissible increase of 2.5 per cent, adjusted to 2.04 per cent for those office holders to which the Superannuation Contribution Guarantee (SGC) increase applies. The increases were consistent with the increases recommended in the Government submission.
14. The conveyance allowance was also increased by 2.5 per cent with effect from 1 July 2021 in accordance with the Tribunal's methodology and the requirements of the SOOR Act.

Section 2

2022 Annual Review

15. On 7 March 2022, the Tribunal wrote to office holders advising of the commencement of the 2022 annual review. The Tribunal did not hold meetings with office holders as part of the 2022 process.

Office Holder Submissions

16. The Tribunal received six submissions from office holders in the Judges and Magistrates Group. An additional submission was also received from the Magistrates Association of NSW (the Association).
17. A joint submission from the Supreme Court Judges argued the Tribunal should determine to increase the salaries of all judges, and all allowances, by 2.5 per cent. The submission stated that in doing so, the Tribunal would be recognising the hard work performed by the Judges that enables the Court to meet its obligations to those who access it, as well as the broader community at large. The submission detailed the work performed by the Supreme Court, noting this work is essential to the maintenance of the rule of law in NSW and Australia. The submission stated that an increase of 2.5 per cent would assist in maintaining judicial remuneration at a level which, in part, compensates for the increased costs of living over the past 12 months. The submission also examined various economic factors and influences, arguing these indicators further support an increase of 2.5 per cent.
18. The Chief Judge of the District Court's submission outlined that the work of the District Court has been impacted by the various strains of COVID-19 which created a backlog of trials. The District Court built on measures taken in 2020, such as advancements in technology, to assist in addressing the backlog and many judges worked through January shutdown period. The submission supports District Court judges receiving an increase of 2.5 per cent.
19. The Chief Judge of the Land and Environment Court of NSW submits the Tribunal ought to award a general increase of 2.5 per cent, and an increase of at least 2.5 per cent in the conveyance allowance. The submission noted that there had been sharp increases in registrations across all classes of the Court's jurisdiction and that this trend is likely to continue. The submission noted the Court continued to operate through the COVID-19 pandemic and that the adaptation of hybrid modes of hearing matters had facilitated a greater number of matters heard throughout the year.

20. The Chief Magistrate of the Local Court submission outlines a case for an increase of above 2.5 per cent based on an increase in work value. The submission stated that the transfer of a large number of Table Offences from the District Court to the Local Court amounted to savings that could offset an increase above 2.5 per cent. The Chief Magistrate commended the submission of the Association to the Tribunal.
21. The President of the Personal Injury Commission (PIC) indicated that the PIC will accept whatever outcome the Tribunal determines in relation to the Judges and Magistrates Group.
22. The Chief Commissioner of the Industrial Relations Commission (IRC) submission stated that it would not be appropriate for the IRC to make a submission on the quantum of a general increase given the IRC's role in determining salaries for public sector employees from 1 July 2022. Although no submission was made on the quantum of the general increase, the submission did state that IRC members could see no basis on which they should be awarded an increase that is different from the amount of the increase which will apply to employees in the Government sector, or an increase below the cap permitted by the SOOR Regulation.
23. The Tribunal has also considered a submission from the Association. The Association sought a work value increase in the salary of Magistrates to 95% of a District Court judge's salary, and an increase in the salary of the Deputy Chief Magistrate and State Coroner to receive 98% of a District Court judge's salary.
24. The submission has canvassed a broad range of factors that the Association argues justifies the work value increase sought. Many of these factors are not able to be considered by the Tribunal when determining remuneration increases, and these factors are not further dealt with in this determination.
25. The Association states since 1995 the NSW Parliament has passed 40 Acts reclassifying a range of offences that are now able to be finalised summarily (The Table Offences Reform). The net effect of the Table Offences Reform has been to transfer criminal jurisdiction from the District Court to the Local Court, and increase the indictable jurisdiction of the Local Court. This significant devolution of jurisdiction has resulted in additional functions being conferred on the Local Court and a significant increase in the responsibility conferred upon Magistrates.
26. The Association argued that officer-related cost savings have flown from the Table Offences Reform, and the subsequent increase in workload therefore satisfies the criteria for a work value increase in remuneration for Magistrates. The Association submits that the measure of cost savings as a result of the Table

Offences Reform is the difference between the cost of finalisation in the District Court and the Local Court for those post reform offences finalised in the Local Court. The Association has provided sets of calculations it argues demonstrates savings and justifies the work value increase sought.

27. In support of its submission, the Association has provided information and data it has sourced from the NSW Bureau and Crime Statistics and Research, and the Chief Magistrate's Office. The submission includes an extensive discussion of various datapoints, which for brevity are not replicated here.
28. Separately, the Association seeks a determination by the Tribunal in relation to a magistrates entitlement to the Living Away from Home Allowance (s.11(2) of the SOOR Act). Section 11C(3) sets out the circumstances in which office holders are eligible for this allowance. The Association states that Magistrates are required as a condition of employment to undertake a minimum of two years service at a regional country location. The Department of Communities and Justice (DCJ) has adopted a practice of limiting the allowance to a 12 month period. The Association submits there is no legal basis for this practice, and that the entitlement is for the whole period a Magistrate is required to perform country service (this being two years). The Association is seeking reparations from the DCJ to all Magistrates who have been refused the living from home allowance in the second year of country service.

Government Submission

29. The Secretary, Department of Premier and Cabinet provided the Government submission to the Tribunal on 8 July 2022. The submission recommends the following increases having regard to the increase in SGC from 1 July 2022:

“With the impact of the COVID-19 pandemic on the NSW economy coupled with inflation, limiting increases to these groups to 2.0 per cent contributes to restoring the budget to a sustainable position to ensure public services can continue to be delivered to the community. This approach also sends a good message to the community, whose main concerns are focussed on front-line workers such as nurses and teachers.

An increase of 2.0 per cent in remuneration, effective from 1 July 2022, is recommended for all employees and office holders whose total remuneration package (“TRP”) is determined by the Tribunal and an increase of 1.53 per cent for non-TRP employees and office holders, for the following groups of employees and office holders covered under the Statutory and Other Offices Remuneration Act 1975:

- *Public Service Senior Executives (including government sector senior executives in the NSW Police Service, NSW Health Service, and the Transport Service)*
- *Public Office Holders Group*
- *Chief and Senior Executive Officers (SES)*
- *Judges and Magistrates Group*
- *Court and Related Officers Group*

The discounted increases of 1.53 per cent is recommended for non-TRP employees and office holders as this discounted amount takes into account the increase to the Superannuation Guarantee Charge (“SGC”) of 0.5 percentage points from 1 July 2022 and uses the same methodology as applied when superannuation was last increased in 2021. This methodology recognises that superannuation is not payable on superannuation itself and as a result, the cost of the additional SGC is less than a 0.5 per cent pay increase.”

Conveyance Allowance

30. The annual percentage change from the 2021 March quarter to the 2022 March quarter in the CPI: Motor Vehicles – Sydney (Series ID A2328552A) is 6.3 per cent.⁵ To reflect this change, the Tribunal intends to adjust the conveyance allowance by the permissible maximum of 2.5 per cent.

⁵ Australian Bureau of Statistics. (2022). *Table 10. CPI: Group, Sub-group and Expenditure Class, Percentage change from corresponding quarter of previous year by Capital City.* <https://www.abs.gov.au/statistics/economy/price-indexes-and-inflation/consumer-price-index-australia/latest-release>

Superannuation Guarantee Contributions

31. From 1 July 2022, the general Superannuation Guarantee Contribution (SGC) increases from 10 per cent to 10.5 per cent.⁶
32. The Tribunal reviewed the impact of the SGC increase on office holders in the 2014 Annual Determination for the Judges and Magistrates Group. The Tribunal determined that it is not required to factor in the cost of SGC increases for those office holders that are potentially entitled to a judicial pension on retirement. The Tribunal determined it is required to take into account the cost of SGC increases for all other office holders in the Group.
33. Whilst the Tribunal acknowledges submissions from office holders about the application of the SGC, the Tribunal's previous determinations on the matter of SGC increases continue to apply. Accordingly, for the 2022 determination, there will be no discounting of the general increase for office holders in Determination No. 1 as there is no cost impact from the SGC for officers who are entitled to a Judges pension. For office holders in Determination No. 2, the general increase will be adjusted to account for the SGC increase.
34. The Government submission outlines the Government's view of appropriate adjustments in respect of the SGC.

⁶ Australian Taxation Office. (2022). *Super guarantee percentage*. https://www.ato.gov.au/Rates/Key-superannuation-rates-and-thresholds/?=redirected_SuperRate&anchor=Superguaranteepercentage#Superguaranteepercentage

Section 3

2022 Annual Determination

General Increase

35. The Tribunal thanks those office holders that made a submission, and acknowledges the difficult and uncertain circumstances in which office holders have operated during the course of the pandemic.
36. After considering submissions received and the provisions of section 6AB of the SOOR Act the Tribunal finds those office holders the subject of this determination should receive an increase of 2 per cent, adjusted to 1.53 per cent for some office holders to take into account the SGC increase.
37. The adjustment to take account of the SGC increase is consistent with the Tribunal's previous determinations and with the methodology set out in the Governments submission.
38. This determination is consistent with the increases recommended in the Government submission. The Tribunal agrees that limiting the increase to 2 per cent will assist in restoring the budget to a sustainable position, and ensure that public services can continue to be delivered to the community.
39. The Association has sought a work value increase in the salary of Magistrates to 95% of a District Court judge's salary, and an increase in the salary of the Deputy Chief Magistrate and State Coroner to 98% of a District Court judge's salary. As discussed at [5], the Tribunal is permitted to determine a remuneration increase in excess of 2.5 per cent if officer-related cost savings for the office holder (or group of office holders) have been achieved to fully offset the increased officer-related costs resulting from increased payment.
40. The Tribunal does not accept that the savings claimed by the Association are officer-related cost savings for the purpose of clause 7(1)(b)(i) of the SOOR Regulation. The Tribunal does not accept that the claimed savings are in the nature of work practices or structural changes as required by the SOOR Regulation. The identified savings are savings of the District Court, and cannot be construed as officer-related savings attributable to the Magistrates of the Local Court.
41. In earlier determinations, the Tribunal has noted some erosion of relativities both within the Judges and Magistrates Group and between the Judges and Magistrates Groups and office holders in the Court and Related Officers Group.

42. Given the prevailing economic conditions and state of the budget, the Tribunal does not consider it an appropriate time to revisit the issue of judicial relativities.
43. The Association has also submitted that the Tribunal ought to make a determination as to the proper interpretation of s.11C of the SOORT Act, which deals with an office holder's entitlement to the Living Away from Home Allowance (s.11C(2) of the SOOR Act). Section 11C(3) sets out the circumstances in which office holders are eligible for this allowance. The Association states that Magistrates are required as a condition of employment to undertake a minimum of two years service at a regional country location. The Association also states that the Department of Communities and Justice (DCJ) has adopted a practice of limiting the allowance to a 12 month period. The Association submits there is no legal basis for this practice, and that the entitlement is for the whole period a Magistrate is required to perform country service (this being two years). The Association is seeking reparations from the DCJ to all Magistrates who have been refused the living from home allowance in the second year of country service.
44. Section 11C(3)(b) provides that the Minister is required to approve the provision of the Living Away from Home allowance. Section 11C(4A) allows the Minister to delegate the exercise of their functions to the head of a Public Service agency or any person employed in a Public Service agency responsible to the Minister. The Tribunal has no function to approve entitlement to the Living Away from Home allowance, and therefore has no power to make the determination sought by the Association. It is also not within the jurisdiction of the Tribunal to make a determination granting compensation for the alleged retrospective failure to award this Allowance.
45. Judges, Acting Judges and Associate Judges will receive an annual increase of 2 per cent with effect from 1 July 2022.
46. Judicial office holders not eligible to receive a pension under the *Judges' Pension Act 1953*, will receive an annual increase of 1.53 per cent with effect from 1 July 2022.
47. The conveyance allowance is increased by 2.5 per cent with effect from 1 July 2022 in accordance with the Tribunal's methodology and the requirements of the SOOR Act.
48. In fulfilling its functions, the Tribunal consulted with the Secretary of the Department of Premier and Cabinet, in their capacity as Assessor under the SOOR Act. The other assessor role is currently vacant.

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49. Pursuant to section 13 of the SOOR Act, the Tribunal determines that the remuneration to be paid to office holders in the Judges and Magistrates Group, on and from 1 July 2022 shall be as specified in Determination Nos. 1-5.
 50. The Tribunal has also made a Report and Determination on Travel Allowances for NSW Judges and Magistrates, and the rates are specified in Determination No. 6.

Section 4

Report on travel allowances for NSW Judges and Magistrates

Background

52. 'Remuneration' is defined in the SOOR Act, as salary and allowances payable to office holders. Judges and Magistrates are holders of offices specified in Schedule 1 of the SOOR Act.
53. 'Allowance' is defined as follows:
- 'allowance does not include a travelling or subsistence allowance, but includes a travelling or subsistence allowance for travel within Australia by the holder of an office specified in Schedule 1 who is:*
- (a) a Judge or Acting Judge of a court, or*
 - (b) any other judicial officer (within the meaning of the Judicial Officers Act 1986) nominated by the Minister by notice in writing to the Tribunal for the purposes of this definition.'*
54. The Tribunal in this determination will be setting rates for overnight stays in capital cities, for overnight stays in areas other than capital cities and meal rates for day or part of day absences from headquarters. The Tribunal has also determined the conditions upon which the rates are to be paid.

2022 Review

55. Historically the Tribunal has had regard to movements in the travel rates as adopted for the NSW Public Sector generally. These rates are based on the reasonable travel allowances as determined by the Australian Taxation Office (ATO). The determination for 2022 being ATO TD2022/10.

Principles Adopted

56. In making its determinations on travel allowance rates the Tribunal has adopted a number of guiding principles as set out below:

- (a) Travelling allowances are intended to meet the costs necessarily incurred by Judges and Magistrates who are required to travel away from home/place of work on official business. Such costs include accommodation, meals and incidental expenses.
- (b) Allowances are provided to ensure that an officer is not financially disadvantaged as a result of having to travel on official business.
- (c) Office holders are not expected to gain or lose financially as a result of travelling on official business.

57. Where an office holder is accommodated in private, non-commercial accommodation such as the home of a family member or friend, a rate of one third of the specified rate is payable, rounded upwards to the nearest dollar.

Conclusion

58. In making its determination the Tribunal has had regard to the current travel allowance rates contained in Taxation Ruling TD2022/10. Non-metropolitan accommodation rates and meal rates are also as set out in the Determination.

59. The Tribunal makes Determination No 6 effective on and from 1 July 2022.

Statutory and Other Offices Remuneration Tribunal

Signed

The Hon. Greg Pearce

Dated: 21 July 2022

Section 5

Determinations

Determination No. 1 – Remuneration of Judges effective on and from 1 July 2022

Position	Salary per annum	Conveyance Allowance (Note 1)
Chief Justice of the Supreme Court	\$556,790	\$24,950
President of the Court of Appeal	\$521,360	\$24,950
Chief Judge of the Land and Environment Court	\$521,360	\$24,950
Judge of the Supreme Court	\$497,580	\$24,950
Judge of the Land and Environment Court	\$497,580	\$24,950
President, Personal Injury Commission	\$497,580	\$24,950
Judge of the District Court	\$445,640	\$22,445
Associate Judge or acting Associate Judge (under the Supreme Court Act 1970)	\$445,640	\$22,445

Determination No. 2 – Remuneration of other Judicial Officers not referred to in determination No.1 effective on and from 1 July 2022

Position	Salary per annum	Conveyance Allowance (Note 1)
Chief Magistrate	\$439,830	\$22,445
Deputy Chief Magistrate	\$371,650	\$17,955
State Coroner	\$371,650	\$17,955
Chief Industrial Magistrate	\$358,020	\$17,955
Chief Commissioner Industrial Relations Commission	\$354,800	\$17,955
Magistrate	\$351,860	\$17,955
Children's Magistrate	\$351,860	\$17,955
Deputy State Coroner	\$351,860	\$17,955
Commissioner Industrial Relations Commission	\$322,540	\$17,955

Conveyance Allowance

Note 1: The Conveyance Allowance determined here shall not count towards pension or for superannuation purposes.

METHODOLOGY: The Tribunal provides increases to the conveyance allowance based on the CPI: Motor Vehicles – Sydney (Series ID A2328552A) March quarter - having regard to the percentage change from the corresponding quarter of the previous year. In considering any adjustment the following conditions will apply:

- Should the March quarter data indicate a decrease in motor vehicle costs the conveyance allowance will remain unchanged (to comply with the requirements of section 21 of the SOOR Act).
- The annual adjustment will not exceed 2.5 per cent (to comply with section 6AB of the SOOR Act).

Determination No. 3 – Acting Judges rates

Supreme Court

The following rate shall be paid for each ordinary court working day on which the acting Judge is occupied in the performance of judicial duties.

Acting Judge of the Supreme Court	\$2,160 per day
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District Court

The following rate shall be paid for each ordinary court working day on which the acting Judge is occupied in the performance of judicial duties as designated by the Chief Judge in the District Court.

Acting Judge of the District Court	\$1,930 per day
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Determination No. 4 – Acting Magistrates rates

Local Court

The following rate shall be paid for each ordinary court working day on which the acting Magistrate is occupied in the performance of duties of a Magistrate.

Acting Magistrate of the Local Court	\$1,460 per day
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Determination No. 5 – Annual leave loading

Determination of leave loading for Judicial Officers effective on and from 1 July 2022

Leave Loading

An annual leave loading shall be payable on the same terms and conditions as are applicable to officers and employees of the Public Service of New South Wales, to each of the following office holders.:

- Magistrates
- Chief Commissioner, Industrial Relations Commission
- Commissioners, Industrial Relations Commission

Determination No. 6 – Travel allowances for Judges and Magistrates

Pursuant to section 13 of the SOOR Act the Tribunal determines that the travel allowances for Judges and Magistrates will be as follows effective on and from 1 July 2022

A. Travel necessitating an overnight stay

Travel Allowances	
Capital City Rates	Amount
Adelaide	\$407.40
Brisbane	\$455.40
Canberra	\$444.40
Darwin	\$491.40
Hobart	\$394.40
Melbourne	\$463.40
Perth	\$463.40
Sydney	\$463.40
Other Centre Rates	
Newcastle	\$393.40
Wollongong	\$393.40
Other Centres	\$393.40

Conditions

General conditions are to be as determined from time to time by the Attorney General.

In addition, the following specific conditions will apply.

- The full daily travel allowance rate is to be paid only where the Judge/Magistrate stays overnight at commercial accommodation. Where the Judge/Magistrate stays overnight at non-commercial accommodation then one third of the daily rate is to be paid.
- Where travel is for a period in excess of 24 hours then meal expenses for the final part day are to be paid.

B. Travel not involving an overnight stay

Meal Allowances for travel NOT involving an overnight stay

Meal	Amount
Breakfast	\$38.20
Lunch	\$54.05
Dinner	\$75.65

Statutory and Other Offices Remuneration Tribunal

Signed

The Hon. Greg Pearce

Dated: 21 July 2022